IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.8.2006

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P.(NPD) Nos.604 and 605 of 2003

T.R.Rengasamy .. Petitioner in both C.R.Ps./Respondent

vs.

1.P.Ganesan .. Respondent in C.R.P.No.604/03 & 1st respondent in C.R.P.No.605/03

2.T.V.Palanichamy
3.Sankariammal .. Respondents 2 and 3 in C.R.P.No.605/03

Revision Petitions filed against the order dated 28.2.2003 made in RCA Nos.15/1999 and 26/1999 on the file of the Sub Judge, Coimbatore confirming the order dated 8.1.1999 and made in R.C.O.P.Nos.17/1996 and 3/1996, on the file of the District Munsif, Mettupalayam.

For Petitioner : Mr.T.R.Rajaraman
For Respondents : Mr.N.Damodaran

COMMON ORDER

These Revision Petitions have been filed against the order dated 28.2.2003 made in RCA Nos.15/1999 and 26/1999 on the file of the Sub Judge, Coimbatore confirming the order dated 8.1.1999 and made in R.C.O.P.Nos.17/1996 and 3/1996, on the file of the District Munsif, Mettupalayam.

I. C.R.P.(NPD) No.604/2003:

2. The tenant is the revision petitioner. The respondent/landlord herein filed RCOP No.17/1996 under Sec. 10(3)(a)(i) of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 (hereinafter called 'the Act') for evicting the revision petitioner from the petition premises on the ground that he requires the premises bonafidely for his own occupation. This eviction petition was resisted by the revision petitioner/tenant on the grounds (1) that the respondent/landlord is one of the owners

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of the property and as the other two owners have not joined in the petition, the RCOP is not maintainable. (2) the petition premises is having two door numbers, namely, 64 and 65 and in door No.64 the tenant is residing with his family members and in Door No.65 he is doing the business of selling eggs, thereby door No.64 is a residential building and door No.65 is a non-residential building and consequently a single RCOP filed for evicting him from both the places is not maintainable. (3) The landlord's mother has got a house in door No.66 within the same compound which is vacant and the same can be used by the landlord and his family members. (4) The landlord is not at all residing in Mettupalayam where the petitioner's premises are situate and (5) the landlord has got another building in the same place thereby there is no bonafide in the RCOP filed by him.

3. The Rent Controller after elaborately evaluating the evidence let in by the parties held that the petitioner in RCOP alone is the owner of the petition premises bearing door Nos.64 and 65 and even otherwise he is entitled to file the RCOP as one of the owners of the property. The Rent Controller has further held that the tenant has not proved that door No.64 is a residential building and door No.65 is a non-residential building and therefore observed that the tenant is residing in both door numbers and he is also doing his business of selling eggs in the same building. The Rent Controller has also referred to the fact that the monthly rent of Rs.350/- is for both the building and in such circumstances there is no evidence to prove that one is a residential and another is a non-residential building. The Rent Controller has also adverted to the judgment of this court wherein it was held that if the building is let out for residential and non-residential purpose equally either of the provisions could be invoked. Therefore the landlord is entitled to claim the premises in question which has been let out partly for residential and partly for non-residential.

4. Insofar as the claim of the tenant that the landlord is not at all residing in Mettupalayam and he is residing at Ooty is concerned, the Rent Controller held that when the landlord is not having any building in Mettupalayam town he can very well maintain the eviction petition.

5. Similarly for the contention that there is another building owned by the landlord in Mettupalayam town, the Rent Controller after going through the evidence found that the building jointly owned by the landlord is situate at Karamadai Panchayat Union and not situated within the Mettupalayam municipality area and therefore the landlord is entitled to maintain the eviction petition. So also, for the contention that there is a building situated within the same compound owned by the mother of the

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landlord, the Rent Controller adverted to the fact that it was not owned by the landlord himself and in case of any misunderstanding that may arise between the landlord and his mother, then the landlord cannot continue to reside there. Apart from that, the rent controller has gone into the question of the bonafide requirement of the landlord and held that as the landlord has proposed to build a commercial complex on Mettupalayam-Karamadai Road and his presence was very much necessary to supervise the proposed construction activity. Thus the rent controller found that the requirement of the landlord is bonafide and the tenant is liable to be evicted.

6. Aggrieved by the order of eviction dated 8.1.1999 the tenant has filed RCA No.15/1999 on the file of the appellate authority- Principal Sub Judge, Coimbatore and the appellate authority by order dated 28.2.2003 dismissed the appeal and confirmed the order of eviction. The appellate authority has re-evaluated the entire evidence and found that the reasons given by the rent controller for ordering eviction is in order and is not liable to be interfered with.

7. Against these concurrent findings, the tenant has filed the above Civil Revision Petitions.

8. Heard the learned counsel for the revision petitioner as well as the respondents. I have gone through the documents filed and the judgments referred to by them in support of their submissions.

9. The learned counsel for the petitioner reiterated the grounds raised by the revision petitioner-tenant before both the authorities below to contend that there is no bonafide on the part of the landlord in filing the eviction petition against the tenant.

10. The rent control appellate authority is the final authority of facts and this court sitting in revision cannot re-evaluate the entire evidence to come to a different conclusion unless the findings are illegal, perverse and unsustainable.

11. Both the authorities below have gone into the question of bonafide in detail and found that there is bonafide on the part of the landlord in filing the eviction petition. I have also gone through the orders of the appellate authority confirming the order of the rent controller and I do not find any illegality nor infirmity nor any perversity in those findings warranting interference by this court under its revisional jurisdiction. In fact both the authorities below have rightly come to a conclusion that there is bonafide on the part of the landlord in requiring the petition premises for his own use and occupation.

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12. In the result, the Civil Revision Petition No.604/2003 is dismissed and the order of the authorities below are confirmed. No costs.

II. C.R.P.No.605/2003:

13. The very same petitioner/tenant in C.R.P.No.604/2003 is the revision petitioner in this C.R.P.No.605/2003 also. The very same tenant against whom the RCOP No.17/1996 was filed by the 1st respondent herein filed RCOP No.3/1996 before the rent controller under Sec.9(3) of the Act 1960 to deposit the rent into court. The same was dismissed by the rent controller by order dated 8.1.1999 on the ground that as there was no authority named to whom the deposit of rent has to be made under Sec.9(3) of the Act. Aggrieved by the order dated 8.1.99 the tenant has filed RCA No.26/1999 against RCOP No.3/1996. The appellate authority by a common order dismissed RCA No.15/1999 filed against RCOP No.17/1996 and RCA No.26/1999 filed against RCOP No.3/1996. Aggrieved against this order dismissing RCA No.26/1999, the above Civil Revision Petition has been filed by the tenant.

14. The appellate authority has also adverted to the fact that there is no named authority with whom the deposit has to be made and upheld the order of the rent controller in this regard. The appellate authority has also adverted to the fact that initially rent was paid by the tenant to the 1st respondent herein and no receipt was issued for the rent by the landlord. In such circumstances, the appellate authority held that the provision contained in Sec.8 of the Rent Control Act could have been followed by the tenant to deposit the rent into the court under Sec.8(5) of the Act. Without doing so, the tenant has filed RCOP No.3/1996 under Sec.9(3) of the Act 1960 which is not permissible as per the order of the appellate authority.

15. I have gone through the orders of the authorities below and I am in entire agreement with the orders of the appellate authority in confirming the order of the rent controller. It is not in dispute that on 8.1.1999 an order was passed by the rent controller. On 28.2.2003 when the order was passed by the appellate authority, there was no named authority with whom deposit of rent has to be made and therefore the petition filed under Sec.9 (3) of the Act was rightly rejected by the authorities. It is also seen that the revision petitioner/tenant on 24.1.1996 sent a sum of Rs.350/- towards the rent to the 1st respondent, but the 1st respondent-landlord even after the receipt of the sum did not issue the receipt. In such circumstances, the revision petitioner-tenant ought to have resorted to the provisions contained in Sec.8 of the Act and should have taken steps to deposit the rent before the rent controller under Sec.8(5) of the Act. Without doing so, the

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tenant had chosen to file a petition to deposit the rent under Sec.9(3) of the Act and the same was rightly dismissed by the authorities below.

16. In the result, I do not find any merit in this C.R.P.No.605/2003 and the Civil Revision Petition is therefore dismissed. No costs.
sks

19.08.2006

1. Learned counsel for the petitioner/tenant seeks six weeks time to vacate the premises. The learned counsel for the respondent/landlord has also agreed for the same. Accordingly one year time, from today, is granted to the tenant to vacate and hand over vacant possession to the landlord. To that effect, an affidavit has to be filed by the tenant within a period of ten days from today, after serving a copy of the same on the learned counsel for the respondent.

2. In the mean time, if there are any arrears of rent payable, the same shall be paid together with the monthly rent, without fail till vacant possession of the premises is handed over to the landlord. If any amount has been deposited by the tenant in the court, the same shall be withdrawn by the landlord on filing a petition before the respective court.

3. Post on 31.8.2006 for filing the affidavit by the tenant.

19.08.2006

ORDER:- These Civil Revision Petitions having been posted on Friday the 9th day of September 2006 for being mentioned pursuant to the order of this Court dated 19.08.2006 and made herein and in the presence of the aforesaid Advocates, the court made the following order:-

These two Civil Revision Petitions, filed by the revision petitioner/tenant were dismissed by this Court on 19.08.2006

2. The learned counsel for the revision petitioner/tenant sought time to vacate the demisable premises. This Court directed the revision petitioner/tenant to file an affidavit to that effect. Accordingly, an affidavit signed by the tenant on 23.06.2006 has been filed today seeking one year's time to vacate the premises.

3. The learned counsel for the respondent/landlord has also agreed for the same.

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4. Therefore, the petitioner/tenant is permitted to stay in the petition premises till 29.06.2007 and vacate and hand over the petitioner's premises on or before 29.06.2007. In the meantime, the petitioner/tenant shall pay the monthly rent without fail till the vacant possession of the premises is handed over to the respondent/landlord namely on or before 29.06.2007.

08.09.2006

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Principal Subordinate Judge
(The Rent Controller Appellate Authority)
Coimbatore.

2. The District Munsif
(Rent Controller) Mettupalayam

3. The Record Keeper
VR Section, High Court, Madras

+ one cc to Mr. N. Damodaran, Advocate sr no. 41998

AKM(CO)
NM(10.10.2006)

C.R.P. N.P.D. Nos.604
and 605 of 2003

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